

Gallagher and Associates, PLLC

COUNSELOR AND ATTORNEY AT LAW

February 6, 2009

Senate Sub-Committee on Local Government
Attn: Chairman John Esp

RE: SB305

Chairman Esp and Members of the Committee,

My name is Bill Gallagher. I am a land use attorney with Gallagher and Associates, PLLC, here in Helena

I urge your passage of SB305 in its entirety. This bill will enhance and improve certain aspects of the subdivision process and help rectify elements of the subdivision and platting act being used to the detriment of our citizens.

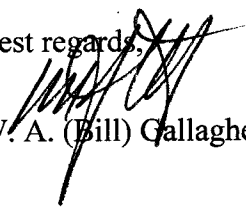
I am especially pleased with the amendment in Section 9, (MCA 76-3-625) cleaning up a long standing statute of limitation problem for applicants who may wish to appeal a commission's decision. The longstanding question that this would resolve is; when does that 30 day window begin? Thirty days is an inordinately short statute of limitations. The problem is exacerbated when a commission does not provide written findings and conclusions until well into or after the thirty day period for appeal has expired. Best case, the 30 day window is further shortened by the time necessary for the BOCC to issue its findings and conclusions. Worst case the BOCC does not complete the record (issued findings and conclusions) until more than 30 days after their decision.

Likewise, I support the Section 5 amendment (MCA 76-3-604) providing for approval of applications not completed within the statutory timeframes. I have personally observed numerous instances where delays, whether negligent or intentional have been to the severe detriment of the applicant and there is no mechanism, short of the courts, for motivating action within established time frames.

I especially endorse the Section 4 amendment to MCA 76-3-510. Lewis and Clark County has been exceptionally excessive in its efforts to unfairly extort revenue and improvements from developers in exchange for approvals. Developers should cover the cost of improving capital facilities to the extent that their development has impacts. This provision reigns in rogue counties like Lewis and Clark that consistently strain to exceed their authority under the law.

Finally, I support the Section 6 amendment (MCA 76-3-608) requiring a governing body to base denial on substantial credible evidence. This provision simply levels the playing field where the applicant is required to provide substantial credible evidence that a subdivision is viable at application. A finding otherwise should require substantial credible evidence otherwise.

Best regards,


W. A. (Bill) Gallagher